

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Levita Simmons, Administrator of the
Estate of Arthur Scott, and Jeffrey
Orvis, Administrator of the Estate of
James Orvis,

CASE NO. 6:21-cv-02036

Plaintiffs,

vs.

Tyson Foods, Inc., doing business as
Tyson Pet Products, and Tyson Fresh
Meats Group, a wholly owned
subsidiary of Tyson Foods, Inc., John
H. Tyson, Noel W. White, Dean Banks,
Steven R. Stouffer, Tom Brower, Mary
A. Oleksink, Elizabeth Croston, Scott
Walston, David Scott, Tom Hart, Cody
Brustkern, John Casey, Bret Tapken,
Hamdija Beganovic, Ramiz Mujelic,
and Unknown Plant Managers and
Supervisors at Tyson Waterloo Plant
and Unknown Plant Managers and
Supervisors at Tyson Independence
Plant,

Defendants.

INDIVIDUAL DEFENDANTS

**JOHN H. TYSON, NOEL W. WHITE, DEAN BANKS,
STEVEN R. STOUFFER, TOM BROWER, MARY A. OLEKSINK,
ELIZABETH CROSTON, SCOTT WALSTON, DAVID
SCOTT, and RAMIZ MUJELIC'S
MOTION TO DISMISS**

(Oral Argument Requested)

Defendants John H. Tyson, Noel W. White, Dean Banks, Steven R. Stouffer, Tom Brower, Mary A. Oleksink, Elizabeth Croston, Scott Walston, David Scott, and Ramiz

Mujelic (collectively, the “Individual Defendants”) join the Motion to Dismiss filed in this case by Tyson Foods, Inc. and Tyson Fresh Meats Group (“Tyson”), and respectfully request dismissal of the claim asserted against them on the grounds set forth in that motion.

In addition, the Individual Defendants move for dismissal with prejudice under Rule 12(b)(6) on the additional grounds that the claim against them is barred by the Iowa Workers’ Compensation Act, and because the complaint fails to plausibly allege that the Individual Defendants caused the alleged injury, and even if the allegations were otherwise sufficient, the alleged cause of action would be barred by the Iowa “COVID-19 Response and Back-to-Business Limited Liability Act” and preempted by federal law. This Motion is supported by the attached Brief in Support of Motion to Dismiss pursuant to Local Rule 7.

WHEREFORE, the Individual Defendants respectfully request this Court dismiss Plaintiffs’ complaint and for such further relief as the Court deems just and necessary.

Dated: June 28, 2021

Respectfully submitted,

/s/ Kevin J. Driscoll
Kevin J. Driscoll AT0002245
Andrew T. Patton AT0011703
FINLEY LAW FIRM, P.C.
699 Walnut Street, Suite 1700
Des Moines, Iowa 50309
Telephone: 515-288-0145
Facsimile: 515-288-2724
Email: kdriscoll@finleylaw.com
apatton@finleylaw.com

Christopher S. Coleman
(*pro hac vice* forthcoming)
Jessica L. Everett-Garcia
(*pro hac vice* forthcoming)
PERKINS COIE LLP
2901 N. Central Avenue, Suite 2000
Phoenix, Arizona 85012
Telephone: 602.351.8000
Facsimile: 602-648.7000
Email: CColeman@perkinscoie.com
JEverettGarcia@perkinscoie.com

**ATTORNEYS FOR TYSON FOODS,
INC., TYSON FRESH MEATS
GROUP, JOHN H. TYSON, NOEL W.
WHITE, DEAN BANKS, STEVEN R.
STOUFFER, TOM BROWER,
MARY A. OLEKSINK, ELIZABETH
CROSTON, SCOTT WALSTON,
DAVID SCOTT, AND RAMIZ
MUJELIC**

CERTIFICATE OF SERVICE

I hereby certify that, on June 28, 2021, a true and correct copy of the foregoing document was served upon all counsel of record via the Court's CM/ECF system as follows:

Elizabeth Araguas
NIDEY ERDAHL MEIER & ARAGUÁS, PLC
425 2nd Street SE, Suite 1000
Cedar Rapids, Iowa 52401
earaguas@eiowalaw.com

Jon Loevy
Gayle Horn
Roshna Bala Keen
Mark Loevy-Reyes
Katie Roche
LOEJVY & LOEJVY
311 N. Aberdeen
Chicago, Illinois 60607
jon@loevy.com
gayle@loevy.com
roshna@loevy.com
mark@loevy.com
katie@loevy.com

Attorneys for the Plaintiffs

Nicholas Klinefeldt
FAEGRE DRINKER BIDDLE & REATH LLP
801 Grand Avenue, 33rd Floor
Des Moines, Iowa 50309
nick.klinefeldt@faegredrinker.com

Attorneys for Defendants Tom Hzart, Cody Brustkern, John Casey, Bret Tapken, and Hamdija Beganovic

/s/ Kevin J. Driscoll